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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: O R D E R :

Ugam Singh Vs. State of Rajasthan.
(S.B. Civil Writ Petition No.4128/1993)

DATE OF ORDER :

August 09, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.L. Jain for the petitioner.
Mrs. Raghu Raj Kanwar, Addl. Government Advocate.

BY THE COURT :

In this writ petition, the petitioner is challenging the validity of the order dated 06.07.1992, Annex.-2 passed by the Deputy Commissioner, C.A.D., Bikaner whereby the petitioner's candidature for promotion to the post of Driver was rejected on the ground that the petitioner is not possessed of the qualification VII passed and, so also, he is not possessing heavy-vehicle driving licence, which was prescribed under the rules known as Rajasthan Agricultural Subordinate Services Rules 1978.

According to the facts of the case, initially the petitioner was appointed as Class IV employee. When he was working as such

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substantively, certain vacancies of the posts of Tractor Driver came into being and for recruitment on the said posts, applications were invited from Employment Exchange and Class IV employees working in the Department. The petitioner was found suitable and appointed to the post of Driver on ad hoc basis; meaning thereby, the petitioner was possessing the qualification which was in existence at that time. According to the facts of the case, the petitioner was reverted to the post of Class IV – Chowkidar though he was appointed on the post of Driver against a clear vacancy. The reason is assigned for the reversion of the petitioner to the post of Class IV to abolition of the post of driver in the year 1983. That reversion order was not challenged by the petitioner. But, subsequently two posts of Driver were created in the department. The petitioner represented his case before the authorities for appointment against the newly created post. Thereafter, the petitioner preferred writ petition before this Court, in which vide order dated 07.04.1993 this Court held as under :

"The petitioner was selected by the duly constituted Selection Committee on the post of tractor-driver on 26.12.1981 and was given appointment/promotion on the post of tractor-driver. He worked on the post of driver till 10-2-83 when two posts of the drivers were abolished. A duly selected person on the post of driver could have been declared surplus and should have been absorbed in some other department on the same post and the reversion of the petitioner to the post of Class IV/Chowkidar was, therefore, not justified. Merely because the petitioner did not make any grievance at that time, will not disentitle him for his legal claim for which he is entitled, particularly in the circumstances when new posts have been created in the department and the appointments on those posts are to be made by the respondents. Even the work of the driver is still being taken from the petitioner by the respondents and, therefore, the petitioner should have been given

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promotion on the post of the driver, but in the facts and circumstances of the case, I do not think it proper to pass any order in this regard because the matter relating to the promotion of the petitioner on the post of driver is under consideration before the respondents. Though the representation is pending consideration with the respondents for last about three years, but no order has been passed giving promotion to the petitioner though the work of the driver is being taken from him. I, therefore, think it proper to direct the respondents to consider within three months the case of the petitioner for his promotion to the post of tractor driver in the department and till the representation of the petitioner for according him promotion on the post of driver is disposed of, the respondents are directed not to make appointment at least on one post of tractor driver which are lying vacant.

With these observations, the writ petition, filed by the petitioner, is disposed of."

In pursuance of the above order passed by this Court, the candidature of the petitioner was considered and rejected vide Annex.-2 on the ground that amendment was made in the Rules on 01.04.1991 by which the qualification for the post of driver was prescribed as VIII passed alongwith heavy-vehicle driving licence. Admittedly, according to the respondents, the petitioner was not possessing the qualification, therefore, the representation of the petitioner was rejected. In the present writ petition, the petitioner has challenged the validity of order Annex.-2 dated 06.07.1993.

By way of filing reply, the respondents pointed out that even the initial appointment of the petitioner to the post of driver was not in accordance with law because at that time he falsely represented that he was possessing 5 years' experience. It is

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further submitted that as per the qualification which was in existence when the earlier order was made, the petitioner was not possessing the qualification for recruitment to the post of driver, therefore, his representation was rightly rejected after due consideration. It is also submitted by learned counsel for the respondents that a person who is not possessed of the basic qualification for promotion cannot be promoted by the department and, therefore, the candidature of the petitioner was rightly rejected by the department for promotion to the post of tractor/jeep driver.

It is also pointed out by the learned Addl. Government Advocate that no representation whatsoever was filed by the petitioner till 1990, therefore, now he is not entitled to get any relief from this Court with regard to quashing Annex.-2 and for seeking direction to the respondents for promotion to the post of tractor/jeep driver.

I have considered the rival submissions made by both the parties and perused the writ petition as well as reply filed by the respondents.

In this case certain things are admitted by both the parties. The earlier writ petition which the petitioner preferred before this Court, in which it was categorically observed that the petitioner was reverted but he was to be absorbed on equivalent

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post. But, he did not challenge the said order of reversion, therefore, the petitioner waived his right. In the said writ petition, this Court directed the respondents to consider within three months the case of the petitioner for promotion to the post of tractor driver in the department and further it was observed that till the representation of the petitioner for according him appointment to the post of driver is disposed of, respondents shall not make appointment at least on one post of driver. In these circumstances, now it is required to be seen whether the petitioner can still be considered for promotion to the post which is subsequently created in the department.

Admittedly, the present qualification was prescribed by way of amendment in the relevant service rules with effect from 01.04.1991 by which it is specifically provided that for promotion the candidate must be VIII passed and possessing heavy-vehicle driving licence. But, prior to this amendment, the qualification was laid down as literate having three years' experience possessing light motor-vehicle driving licence. It is obvious that earlier the petitioner's candidature was considered for direct recruitment and he was found suitable and appointed to the post; meaning thereby, he was possessed of the requisite qualification for appointment though on temporary basis. It is true that in the department selections are made for regular

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appointment but initially appointment is provided on temporary basis. It is also admitted case that the petitioner was reverted earlier from the post of driver to the post of Chowkidar due to abolition of the post of driver. There is thus no lack on the part of the petitioner. Therefore, it is established fact on record that before the amendment the petitioner was possessed of the requisite qualification and was duly recruited and appointed to the post of driver. The petitioner was reverted due to abolition of the post. In these facts and circumstances, in the event of creation of the post in the department vacancy arose in the year 1990 and the petitioner was required to be re-appointed to the post on the basis of qualification which he was possessing in the year 1990 but the respondents considered the case of the petitioner taking into account the subsequent amendment in the rules with regard to qualification which came into effect after creation of the posts. Therefore, in my considered opinion, it is a fit case in which the respondents are under obligation to consider the petitioner's candidature against the vacancy created in the year 1990 and, that too, after taking into account the qualification which was in existence in the year 1990.

Consequently, the writ petition is allowed. Order Annex.-2 whereby the petitioner's case is rejected on the basis of subsequent amendment in the qualification for appointment to

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the post of driver is quashed and set aside. The respondents are directed to consider the case of the petitioner for promotion against the vacancy which arose in the year 1990 due to creation of the post in the department while taking into account the qualification which was in existence in the year 1990 and prior to 1991, within a period of three months. If the petitioner is found suitable, he may be granted promotion to the post of driver alongwith all consequential benefits.

No order as to costs.

(Gopal Krishan Vyas) J.